IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11953 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH ALIAS JHALAR SHITALPRASAD SHAHU

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SAMIR DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/01/2001

ORAL JUDGEMENT

#. The petitioner is detained as dangerous person. Challenging this order of the respondent No.1 the learned counsel for the petitioner raised manifold contentions but as this petition deserves to be accepted only on one

ground it is not necessary to refer, deal with and decide all those contentions.

#. In pare 9 of the Special Civil Application, the petitioner made a grievance that in 3 C.Rs. the statement of witness recorded under Section 161 of Cr.P.C. and copies thereof have not been supplied to the petitioner. Para 9 of the petition reads as under :-

"The petitioner further submits that he is not supplied the sufficient and complete material, as stated in charge sheet Counter in respect of all the Criminal Offences, those shown as pending trial. The petitioner is not supplied the statements of witnesses, as per chargesheet counter, i.e. Mr.Dineshkumar Mohanbhai Panchal, Mr.Babulal Mohanlal Mistri, Mr.Kiritbhai Maganlal Sevak, Mr.Pravinbhai Ranchhodbhai Patel, P.S.I. Mr.N.B.Kallaswa, P.I. Mr.B.B.Patel in respect of C.R. No.91/2000. Thumbuben Balubhai, P.S.I. Mr.H.P.Vaghela, Mr.N.B.Kallaswa, A.S.I. Vajeesinh Gorjibhai, Mr.B.B.Patel in respect of C.R.No.I.99/2000. A.S.I. Mr. Vajesinh Gorji, Head Constable Mr.Jayesh Gandabhai, P.S.I. Mr.H.P.Vaghela, P.S.I. Mr.N.B.Kallaswa, Mr.B.B.Patel in respect of C.R.No.I.100/2000. Therefore, he could not make the effective representation to the State Government, detaining authority and also to the Advisory Board and his valuable right under Article 22(5) of the Constitution of India is violated. Thus, his continued detention has become illegal".

#. Reply to the Special Civil Application has not been filed by the detaining authority. Short reply to the petition of the State of Gujarat is there on record. As reply to the Special Civil Application is not filed by the respondent-detaining authority the grievance made by the petitioner in para 9 of the petition stands uncontroverted and are taken to be accepted by the respondent. In affidavit in reply to the petition, the State Government has not given reply to para No.9 of the Special Civil Application. Otherwise also the learned counsel for the respondents fairly conceded that the documents mentioned in para 9 of the petition have not been supplied to the petitioner. As a result of this uncontroverted factual position, it is a clear case where the petitioner has been denied of his right of making effective representation against the detention order as guaranteed to him under Article 22(5) of the Constitution

of India.

In the result, this Special Civil Application succeeds and the same is allowed. The order of detention of the petitioner dated 31.8.2000 is quashed and set aside. The petitioner Rajesh @Jhalar Shitalprasad Shahu, the detenu, at present in Bhuj Special Jail, Bhuj be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. As learned counsel for the respondents fairly conceded the position no order as to costs.

(S.K.Keshote, J.)

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